

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ROBERT JOE QUIMBY,  
*Petitioner.*

No. 2 CA-CR 2019-0134-PR  
Filed October 28, 2019

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See* Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

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Petition for Review from the Superior Court in Cochise County  
No. CR201300464  
The Honorable James L. Conlogue, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

John William Lovell, Tucson  
*Counsel for Petitioner*

STATE v. QUIMBY  
Decision of the Court

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Eppich concurred.

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V Á S Q U E Z, Chief Judge:

¶1 Petitioner Robert Quimby seeks review of the trial court’s order dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find no such abuse here.

¶2 After a jury trial, Quimby was convicted of nineteen sexual offenses involving his daughter and stepdaughter. The trial court sentenced him to a combination of concurrent and consecutive prison sentences, the longest of which were life terms. We affirmed Quimby’s convictions and sentences on appeal. *State v. Quimby*, 2 CA-CR 2014-0349 (Ariz. App. May 1, 2015) (mem. decision).

¶3 Quimby then sought post-conviction relief, claiming trial counsel was ineffective by failing to obtain and present at trial copies of records from Child Protective Services and the Department of Child Safety (referred to collectively as DCS) related to the dependency proceeding involving the victims, maintaining this constituted “incredible exculpatory evidence.” And he contended that, because the allegations of sexual abuse in the dependency matter were dismissed as unsubstantiated,<sup>1</sup> trial counsel should have moved to dismiss the criminal matter based on collateral

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<sup>1</sup> As the trial court noted in its ruling below, the sexual abuse allegations in the dependency matter were found to be unsubstantiated due to a negotiated settlement agreement “under which [Quimby] entered a ‘no contest’ admission to physical abuse of [the victims and another child] in exchange for a dismissal of the allegations related to sexual abuse.” Quimby then consented to the adoption of his daughter, and the mother of all three victims consented to the adoption of all the children; the children were adopted, and the dependency case was closed.

STATE v. QUIMBY  
Decision of the Court

estoppel.<sup>2</sup> He further asserted that he “was denied his [d]ue [p]rocess right to present a complete defense by the [s]tate’s failure to disclose” all of the records from the dependency matter and that the trial court should have released the unredacted version of those records. Quimby also claimed he was entitled to an evidentiary hearing. The court summarily dismissed his petition, and this petition for review followed.

¶4 On review, Quimby argues the trial court erred in denying relief on his claims of ineffective assistance of counsel. He reasserts that trial counsel was ineffective by failing to obtain and present to the jury copies of DCS’s records from the dependency matter.<sup>3</sup> Quimby also reasserts that trial counsel should have moved to dismiss the criminal matter based on collateral estoppel, arguing that the stipulated dismissal of the sexual abuse allegations in the dependency matter means “the issue was actually litigated, and collateral estoppel applies.” Maintaining the court erred by denying this claim, he asserts *Crosby-Garbotz v. Fell*, 246 Ariz. 54 (2019), controls the outcome here, despite the court’s reasoning to the contrary.

¶5 “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the

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<sup>2</sup>In his petition below, Quimby pointed out that this court’s decision in *Crosby-Garbotz v. Fell*, 244 Ariz. 339 (App. 2017), was then pending on review. In the reply to his petition, he correctly noted that the Arizona Supreme Court had recently vacated our decision in that matter. See *Crosby-Garbotz v. Fell*, 246 Ariz. 54, ¶¶ 1, 26 (2019) (issue preclusion may apply in criminal proceeding when issue of fact is “fully and fairly adjudicated” in dependency proceeding and other elements of preclusion are met).

<sup>3</sup>Quimby attached to his petition below the affidavit of attorney Bradley Roach, in which Roach opined that trial counsel’s failure to request disclosure in the criminal matter of the DCS investigation in the dependency case “f[ell] beneath the objective standard of reasonableness.” Roach further opined that any jury, having been told that the claims of sexual abuse in the dependency matter were found to be unsubstantiated, “would be highly likely to return a [n]ot [g]uilty verdict.” To the extent Quimby suggests the trial court failed to adequately consider Roach’s affidavit, we note that the court expressly mentioned the affidavit in its ruling, apparently concluding the record did not support Roach’s legal conclusions.

STATE v. QUIMBY  
Decision of the Court

defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006); accord *State v. Kolmann*, 239 Ariz. 157, ¶ 9 (2016); see also *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). In its ruling, the trial court clearly identified, addressed, and correctly resolved the claims Quimby raises on review, and we adopt that portion of the court’s ruling addressing those issues.<sup>4</sup> See *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶6           Although we grant the petition for review, we deny relief.

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<sup>4</sup>Because Quimby does not expressly challenge on review the trial court’s ruling on the due process claim he raised below, we do not address it. See Ariz. R. Crim. P. 32.9(c)(4)(B)(ii).